

Jan D. Sokol, OSB #780873  
Arnold L. Gray, OSB #792470  
Angela M. Otto, OSB #993342  
STEWART SOKOL & GRAY, LLC  
2300 SW First Avenue, Suite 200  
Portland, OR 97201-5047  
Telephone: 503-221-0699  
Facsimile: 503-223-5706  
Email: [jdsokol@lawssg.com](mailto:jdsokol@lawssg.com)  
[agray@lawssg.com](mailto:agray@lawssg.com)  
[aotto@lawssg.com](mailto:aotto@lawssg.com)  
Of Attorneys for J.E. Dunn Construction Company

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In re: ) Case No. 10-35333 tmb11  
 )  
Salpare Bay, LLC, ) PRECAUTIONARY OBJECTIONS  
 ) TO MOTION TO OBTAIN CREDIT  
Debtor. )  
 )

J.E. Dunn Construction Company, successor in interest to J.E. Dunn Northwest, Inc. ("Dunn"), submits the following precautionary objections<sup>1</sup> to the Motion to Obtain Credit.

1. The Motion requests a Priming Loan of \$750,000. However, the proposed order explains that \$500,000 is the initial maximum with the possibility of an additional

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<sup>1</sup>These objections have been discussed with Debtor's counsel, and it is Dunn's understanding they will be addressed in any final order granting the Motion.

\$250,000 under the terms of the Settlement Agreement between the Judgment Creditors and Debtor. This should be clarified by inserting a provision in the proposed order which provides that unless the additional advance of \$250,000 is approved under the terms of the Settlement Agreement and further order of the court, the Priming Lien priority shall be limited to the amount of \$500,000.

2. The Motion requests the priming lender receive an assignment of marina rents, which on default of Debtor would be prior to Dunn's rights. This would defeat the entire purpose of the adequate protection to be provided to Dunn in the Settlement Agreement. There is nothing in the proposed order granting Dunn adequate protection/replacement lien, or for that matter the additional security granted to the priming lender (although the Motion itself addresses it). Dunn has no objection to a grant of assignment to the priming lender; however, on default, the judgment creditor's rights to the marina DIP account must be prior to the priming lender. There should be a provision in the order granting the adequate protection/replacement lien to judgment creditors, and deeming their interest in liens validly protected and enforceable upon entry of the order.

3. Dunn is concerned regarding paragraph 9 of the Motion, which essentially provides that in the event of a conflict between the Settlement Agreement and the terms and conditions of the order approving the Motion, the order shall prevail on the rights of the priming lender. The Settlement Agreement is the foundation of the priming loan and the proposed order allows the loan. The Settlement Agreement allows the Debtor to obtain the priming loan, and therefore, should control. If anyone believes a conflict in terms exist, that should be resolved now. The way paragraph 9 is written, it

arguably diminishes the rights of Dunn. The Settlement Agreement confines the Debtor to terms inside the parameters of the Settlement Agreement. If the priming lender wants more, the Debtor does not have the power to simply say "yes." If there is a specific concern that needs to be addressed, then that should be set out so all parties understand it now.

4. The Motion refers to construction claimants, however, the Settlement Agreement covers the "judgment creditors" (a larger group).

DATED this 12<sup>th</sup> day of July, 2011.

STEWART SOKOL & GRAY, LLC

/s/ Jan D. Sokol

Jan D. Sokol, OSB #780873  
Arnold L. Gray, OSB #792470  
Angela M. Otto, OSB #993342  
Attorneys for J.E. Dunn Construction  
Company

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **PRECAUTIONARY OBJECTIONS TO MOTION TO OBTAIN CREDIT** on:

Tara J. Schleicher  
Christopher L. Parnell  
Farleigh Wada Witt  
121 SW Morrison Street, Suite 121  
Portland, OR 97204-3136  
[tschleicher@fww.law.com](mailto:tschleicher@fww.law.com)  
[cparnell@fwwlaw.com](mailto:cparnell@fwwlaw.com)

United States Trustee  
620 SW Main Street, Suite 213  
Portland, OR 97205  
[USTPRegion18.PL.ECF@usdoj.gov](mailto:USTPRegion18.PL.ECF@usdoj.gov)

- by **E-filing** a full, true and correct copy thereof to the attorney, as shown above, at the electronic mail address reflected on the court's CM/ECF system, on the date set forth below.

Dated this 12<sup>th</sup> day of July, 2011.

/s/ Jan D. Sokol  
Arnold L. Gray, OSB #792470  
Angela M. Otto, OSB #993342  
Jan D. Sokol, OSB #780873  
Attorneys for J.E. Dunn Construction Company